

A Proposal for Modifications to the Memorandum of Understanding for Cruise Operations in Washington State

From: Carol Bernthal, Superintendent, Olympic Coast National Marine Sanctuary

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The Place

Olympic Coast National Marine Sanctuary (OCNMS or Sanctuary) is a marine protected area of national and international significance that covers 3,310 square miles of marine waters off the rugged Olympic Peninsula coastline. The area encompassed by the Sanctuary is recognized for its unique and abundant wildlife, relatively undeveloped condition, and productive ecosystem through state and federal designations – Washington Seashore Conservation Area, Olympic National Park's coastal wilderness unit, and Washington Islands National Wildlife Refuges, as well as the Sanctuary. These extraordinary natural values were acknowledged and protected as early as 1907 when seabird colonies on the coast's islands were first granted Federal conservation protection under a seabird reserve system by President Theodore Roosevelt. The Sanctuary provides habitat for one of the most diverse marine mammal faunas in North America and a critical link in the Pacific flyway. Significant natural resources include 29 species of marine mammals, nesting seabirds, haul-out sites for sea lions and seals, a breeding population of sea otters, and nest sites for bald eagles and other raptors. The Sanctuary is enriched by traditional Native American cultures, sustained in the contemporary lives of members of the Quinault, Hoh, Quileute, and Makah tribes. These tribes and many others have economic reliance upon and cultural ties to abundant natural resources and relatively uncompromised water quality. One of the truly unique aspects of OCNMS is its unpolluted state supported by separation from developed urban and industrial areas and associated contaminants.

The MOU

OCNMS appreciates voluntary measures taken by the NorthWest CruiseShip Association (NWCA) through the existing Memorandum of Understanding (MOU) between Washington Department of Ecology (WDOE), NWCA and Port of Seattle. These measures are an exemplary demonstration of environmental stewardship and commitment by NWCA to routine operations that are compatible with protection of water quality in the region.

The MOU contains clauses that reference the Sanctuary.

- Clause 2.1.4, developed for Amendment No.3 to the MOU in 2007, eliminates any discharge into waters of the Sanctuary of residual solids from either a type 2 marine sanitation device or an advanced waste water treatment system.
- Clause 6 identifies both acknowledgment of and compliance with OCNMS regulations. ["The NWCA agrees to acknowledge and comply with appropriate rules and regulations related to the Olympic Coast National Marine Sanctuary, including but not limited to the regulations for implementing the National Marine Sanctuary Program (subparts A through E and subpart O of Title 15, Chapter IX, Part 922 of the Code of Federal Regulations)..."]
- Clause 6 also acknowledges and supports compliance with a voluntary vessel traffic measure that was developed to reduce the risk of catastrophic injury to marine resources of the Sanctuary and the outer coast of Washington state. ["...and the International Maritime Organization (IMO) "Area To Be Avoided" off the Washington Coast.""]

Although signatories to the MOU are the NWCA, Washington State Department of Ecology, and the Port of Seattle, applicability of the MOU covers marine waters and jurisdictions adjacent to (and overlapping with) Washington state waters.

- Clause 2.1.4 states in part: “...All parties acknowledge that most of the Olympic Coast National Marine Sanctuary lies beyond 3 miles of shore and therefore is outside the jurisdiction of the State of Washington.”
- Clause 2.1.4, the prohibition on discharge of residual solids, also specifically applies to waters within 12 nautical miles from shore. The Clean Water Act defines federal waters to include the territorial sea, within 12 nautical miles from shore. The territorial sea is defined in the 1982 United Nations Convention on the Law of the Sea.

Proposal for 2010 Amendments

OCNMS requests that WDOE, NWCA and Port of Seattle strengthen water quality protection measures and modify their MOU in the following manner:

1. Eliminate discharge in OCNMS of any wastewater (treated or untreated) from cruise ships in sanctuary waters.
2. Apply terms of the agreement to all NWCA member vessels, regardless of their destination or ports of call.

Rationale for Proposed Amendments

1. Protection of water quality in the national marine sanctuary.

OCNMS regulations prohibit discharging or depositing any material or other matter but include an exception that allows for discharge of “biodegradable effluent incidental to vessel use and generated by marine sanitation devices approved in accordance with § 312 of the Federal Water Pollution Control Act, as amended, (FWPCA), 33 U.S.C. 1322 et seq.” Cruise ships typically generate substantially higher volumes of wastewater than other vessels because they carry hundreds of passengers and crew. Although treated and even untreated wastewater from a cruise ship may normally have low contaminant load, the volume of wastewater generated and discharged from a cruise ship creates risk that waters of the sanctuary could be degraded by such discharges.

2. Public perception and public relations

During the fall of 2009, OCNMS conducted public scoping meetings at initiation of our management plan review. We received numerous public comments expressing concerns about water quality impacts from cruise ships and supporting stronger control of discharges from cruise ships. Proactive, voluntary action by the cruise ship industry will be well received by sanctuary constituents who have strong interest in marine conservation.

3. Consistent operational guidelines for national marine sanctuaries on the West Coast

As noted on page 1 of the MOU, cruise vessels “operate in international waters and move passengers to destinations worldwide and, consequently, those cruise vessel waste management practices must take into account environmental laws and regulations in many jurisdictions and international treaties and conventions”. This proposed amendment to the MOU would make cruise vessel discharge practices in OCNMS consistent with those in California sanctuaries, where such discharges are prohibited by sanctuary regulations.

4. Minimal impact to the industry

Although OCNMS has not conducted a formal analysis of impacts to the cruise ship industry of the proposed MOU amendments, it is our understanding that cruise ships typically spend a relatively short period of time in the Sanctuary. Vessels entering the western Strait of Juan de Fuca following established vessel traffic lanes do traverse the Sanctuary for roughly 10 nautical miles. Vessels in transit to and from California would have a longer residence time in the Sanctuary. If in voluntary compliance with the ATBA, these vessels would be in sanctuary waters for roughly 20 nautical miles.

5. Consistent discharge practices regardless of port of call.

Clause 1.1 limits applicability of measures in the MOU to vessels calling on ports in the state of Washington. OCNMS requests that voluntary prohibitions related to Sanctuary waters apply to all cruise vessels, regardless of their planned ports of call.

Potential OCNMS Regulatory Changes

There are four national marine sanctuaries off California – Channel Islands, Monterey Bay, Gulf of the Farallones, and Cordell Bank national marine sanctuaries. Each of these sanctuaries has its own set of regulations, but as noted under #3 above, all prohibit “discharging or depositing, from within or into the Sanctuary, any material or other matter from a cruise ship except clean vessel engine cooling water, clean vessel generator cooling water, clean bilge water, or anchor wash.” As noted under #2 above, OCNMS received public encouragement for adoption of similar regulatory language. Moreover, there is support and sound rationale for regulatory consistency within the West Coast Region of the Office of National Marine Sanctuaries. As a result, OCNMS is considering incorporating this prohibition into its regulations but has not made a final decision to do so. This and other proposed regulatory changes will be subject to a formal evaluation that may put implementation about 2 years into the future. In the meantime, adoption by the cruise ship industry of practices that are consistent between West Coast sanctuaries, responsive to public concerns, and consistent with regulations that may be implemented in the future will likely garner good will toward the industry as a proactive measure in support of marine conservation.

One advantage of an OCNMS regulation to prohibit discharges from cruise ships to waters of the sanctuary is that they would apply to all cruise ships, including those not members of NWCA. To assess this issue, we analyzed vessel transit data from 2008, the most recent year for which data had been compiled. In 2008, there were 252 cruise ship transits through the Sanctuary, 10 of which were by vessels not listed on NWCA’s web site. Thus, NWCA members account for 96% of cruise ship transits through the sanctuary.

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